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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local Exchange)	CC Docket No. 01-338
Carriers)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act)	CC Docket No. 96-98
of 1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	

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**COMMENTS OF
SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC
IN RESPONSE TO
FCC NOTICE OF PROPOSED RULEMAKING FCC 01-361**

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IN RESPONSE TO NPRM - FCC 01-361

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I Executive Summary

A. Goals of the Act

In 1996, the United States Congress passed the 1996 Telecommunications Act ("1996 Act")(47 U.S.C. § 151, *et seq.*), which, states in its preamble, that this is:

An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Since the passage of the 1996 Act, the FCC, state Public Service Commissions and the courts have engaged in numerous proceedings for the implementation of the market-opening provisions of the Communications Act as amended by the 1996 Act as "the result (of competition) is often lower prices for the consumer. Of course, competition can lead to disputes over how, when and where parties may compete." According to the FCC:

[A]t the core of the Act's market-opening provisions is section 251. In section 251, Congress sought to open local telecommunications markets to competition by, among other things, reducing economic and operational advantages possessed by incumbents.¹

Furthermore, the FCC stated in that Order that:

Section 251 requires incumbent LECs to share their networks in a manner that enables competitors to choose among three methods of entry - the construction of new networks, the use of unbundled elements of the incumbent's network, and resale of the incumbent's retail services.

Section 251(a) requires all "telecommunications carriers" to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(c)(3) requires incumbent LECs to provide nondiscriminatory access to unbundled network elements. In addition, section 251(c)(6) imposes an obligation on incumbent LECs "to provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to

¹ See Advanced Services Order (ASO). CC Docket No. 98-147, (adopted March 18, 1999) at ¶ 13.
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1 unbundled network elements. . . ." Finally, for competitors that seek to
2 compete by reselling the incumbent LEC's services, section 251(c)(4) requires
3 incumbent LECs to offer for resale at wholesale rates "any telecommunications
4 service that the carrier provides at retail to subscribers who are not
5 telecommunications carriers."
6

7 See Advanced Services First Report and Order. CC Docket No. 98-147, (adopted March
8 18, 1999) at ¶14. (Emphasis added.)

9 The business model envisioned by Congress was for small competitors to: (1) amass
10 customers as resellers, (2) move to leasing the cost-based unbundled network elements, and (3)
11 once a sufficient customer base was acquired and economies of scale were realized, begin to
12 purchase and implement one's own facilities.

13 The FCC should continue to encourage competition, as such will lead to innovation and
14 the development of advanced technologies as competitors look to distinguish themselves in the
15 marketplace.

16 **B. Supra – the “Model CLEC”**

17 Supra is, and has been since shortly after the enactment of the TCA, a CLEC, attempting
18 to provide competition in the local telephone industry. Currently, Supra has acquired
19 approximately 200,000 access lines in the State of Florida alone. The foundation of Supra's
20 business plan was the TCA itself, as well as the FCC and various state commissions' rules and
21 orders interpreting the intent of Congress in passing the TCA. Congress intended to create a
22 “Model CLEC” that would use ILECs' existing networks in order to effectively compete with
23 those ILECs “on rates, terms and conditions that are just, reasonable, and nondiscriminatory”²
24 with little capital and within a minimum period of time. *Supra's mission was and is to be that*

1 *Model CLEC*. Since January 1997, Supra has tried unsuccessfully to secure nondiscriminatory
2 access to ILEC's services, unbundled network elements, facilities, combinations,
3 interconnection, personnel and ancillary functions including collocation and rights of way, in
4 order to enter the telecommunications services market and begin the provision of national new
5 innovative advanced telecommunications services.

6 Only through years of hard fought legal battles has Supra been able to begin to realize
7 some of the benefits which Congress intended to provide small competitors. For example. . .

- 8 • Won the right to the same level of edit checking the ILEC enjoys in its retail systems
9 in the CLEC OSS LENS before the Florida Public Service Commission (FPSC).

10 Such capability has yet to be delivered.

- 11 • Won the right in December 1998 to collocate in office previously deemed closed.

12 Pricing disagreements prevented collocation attempts to date.

- 13 • Won the right for the first time, on June 5 2001, to order and enjoy UNE
14 Combinations first promised by the Act, and by each Supra Interconnection
15 agreement signed with BellSouth since October 1997. Said capability provided via a
16 rudimentary OSS Interface, the LENS CLEC OSS causing lost dialtone, loss of long
17 distance service, cancellation of customer long distance calling plans and numerous
18 other customer disruption opportunities.

19
20 Supra has attached a copy of its June 5, 2001 Commercial Arbitration Award (Supra
21 Exhibit # 5), and in abundance of caution, will file it under confidential cover. However, Supra

² Section 251(c)(2)(D) ~~of the~~ of the Communications Act, as amended by the Telecommunications Act of 1996.

1 asks that the FCC pay close attention to pages 14-24, which detail significant findings regarding
2 one ILEC's willful intent.

3 In fact, if one factors is the legal expense incurred in enforcing the ILECs' compliance in
4 accordance with the TCA, the acquisition cost per customer is raised astronomically.
5 Apparently, the ILECs are in favor of competition up until the point in which they begin to lose
6 customers.

8 II UNE Rules of Critical Importance

9 A. FCC should NOT limit ILECs' existing unbundling obligations

10 1. Only recently have ILECs begun to comply with unbundling obligations

11 Supra is amazed that the FCC is even considering limiting the ILECs' unbundling
12 obligations given that only recently have the ILECs begun to comply with such. This industry,
13 in large part, has not reaped the benefits of the TCA because the ILECs have (a) endlessly
14 challenged the constitutionality of the TCA itself, (b) refused to comply with their obligations
15 even after being ordered to do so, and (c) have ruthlessly done all they can to prevent
16 competition.³

17 In fact, BellSouth has proven to be quick to implement FCC descision that they believe
18 benefit BellSouth. For Example on May 29, 2001 Supra was informed that its UNE customers
19 could not have BellSouth FastAccess DSL, (nor any other providers DSL that depends on the

³ The poorly reasoned decision reached in Goldwasser v. Ameritech Corp., 222 F.3d 390, 401 (7th Cir. 2000), has done much to provide ILECs free reign to act in an anti-competitive manner, despite the anti-trust savings clause in the TCA.

1 BellSouth DSL service in their FCC #1 Tariff) based solely on a reading of ¶26 of the *Third*
2 *Report And Order On Reconsideration* In Cc Docket No. 98-147⁴ released January 19, 2001.

3
4 However BellSouth's opposition to the FCC identification of network elements⁵, their
5 resistance to allowing network element combinations to replicate retail products⁶ have led to the
6 situation where Supra was **first** allowed to order network element combinations on June 5, 2001
7 using a rudimentary and error prone OSS interface, the Web based LENS. (Supra Exhibit # 6).
8 This Commission **must** look beyond the ILECs policies and take serious consideration of
9 **compliance measurement**, as it is sad to say that mere legal right to enjoy UNE Combinations,
10 collocation, parity of OSS does not mean that the CLEC who requests same receives it. Supra's
11 experience shows the ILEC is willing to go to any length to deny a competitors rights. BellSouth
12 has attempted to use its losing arguments against providing UNE combinations⁷

13
14 It would be unfair to limit the ILECs' unbundling obligations at this early date, as only in
15 the last few years, and in Supra's case the last few months, have competitors truly been able to
16 begin to implement their business plans using the unbundled network element approach. **DO**

17 **WE HAVE ANY NUMBERS WE CAN USE TO MAKE THIS POINT??**

18
19 **2. A “facilities first” business plan has proven unsuccessful**

20 The results thus far have been devastating. CLECs originally were pushed into a “if you
21 build it, they will come” business plan. Billions of dollars have been invested in hopes of first

⁴ Third Report and Order on Reconsideration - Line sharing Order CC Order 01-26 released

⁵ First Report and Order CC order 96-325 ¶50, 229, 230, 236, 253, 259, 291 et al.

1 building infrastructure and facilities that would, in theory, attract customers. Of course, this
2 never happened. Anxious creditors demanded immediate returns and, when they did not receive
3 such, brought down the likes of ~~Rhythms~~Rhythms, Northpoint, Allegiance, XO, Windstar, Global
4 Crossing, etc. The losers: small investors who got burned, and consumers who are still being
5 gauged by the ILECs. The winners: the already rich ILECs (not to mention the investment
6 bankers) who took in big paychecks for “collocating” competitors equipment (mostly at CLEC
7 hotels), and allowing them to resell their services while maintaining sizable profit margins.

8
9 It is now painfully obvious that, in order to be successful, particularly in a marketplace in
10 which investors shy away from this industry as if CLECs were all lepers, a company must
11 generate capital internally – i.e. acquire revenue via customer acquisition – before spending
12 money on facilities.

13 14 3. Specific UNEs

15 a. Loops, Subloops and NID

16 If anything, the FCC should expand the ILECs’ obligations to provide unbundled, cost
17 based access to these UNESUNEs. In the *UNE Remand Order*, the FCC required incumbent
18 LECs to provide access to loops, subloops, and network interface devices (NIDs) in order for
19 requesting carriers to provide telecommunications services.⁸ The loop (and subloop) is defined
20 as “a transmission facility” and all of its features, functions and capabilities.⁹ Requesting carriers

⁶ *First Report and Order* CC order 96-325 ¶337, 382, 641, 742, 847 *et al.*

⁷ *First Report and Order* CC Order 96-325

⁸ *UNE Remand Order*, 15 FCC Rcd at 3772, 3789, 3801, paras. 165, 205, 232; *see* 47 C.F.R. §§ 51.319(a)-(b).

⁹ 47 C.F.R. § 51.319(a)(1). The subloop is defined as “any portion of the loop that is technically feasible to access at terminals in the incumbent LEC’s outside plant.” 47 C.F.R. § 51.319(a)(2).

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1 are impaired without access to all available loop capacities (e.g., DS1, DS3, OC3) and dark
2 fiber.¹⁰ The NID is defined as “any means of interconnection of end-user customer premises
3 wiring to the incumbent LEC’s distribution plant.”¹¹

4
5 The FCC asks if it should replace these existing network elements with a single “unified”
6 loop, explicitly incorporating the functionality of additional equipment, such as packet switching,
7 splitters or other passive devices into the definition of the loop. Supra agrees with this “unified”
8 loop approach, as it would simplify the ILECs’ obligations, giving them less room to
9 discriminate against CLECs, thereby allowing CLECs to provide greater competition by
10 providing a greater number of services. For instance, under the current rules, ILECs can make it
11 cost-prohibitive to a UNE-based CLEC to provide ADSL services to customers, as ILECs are not
12 required to unbundle the splitter.¹²

13 In reality, the loop is a far more complex object than it was in 1996, having seen the large
14 increase in carrier serving areas, fiber to the curb, fiber in the loop, and other active and passive
15 electronics. BellSouth's Investor Relations Website (<http://www.bellsouth.com/investor/>
16 it_busprofile_coredigital.html) and a linked document
17 http://www.bellsouth.com/investor/xls/ir_businessprofile_statistics.xls shows an incredible
18 65.8% of all loop feeder in the nine state region now contain fiber. This density of fiber in the
19 loop demands a reconsideration of the modern loop by this Commission, while retaining the
20 separate subloop and NID elements to be deployed in those circumstance that demand it. Failure
21 to address the modern loop has already unbalanced the ILEC - CLEC equation and made

¹⁰ *UNE Remand Order*, 15 FCC Rcd at 3776-77, paras. 174, 176.

¹¹ 47 C.F.R. § 51.319(b).

1 meaningful competition more difficult to achieve. The ILEC is taking advantage of the
2 imbalance in its favor now.

4 **i New vs. Existing Facilities**

5 The FCC seeks comment on whether a distinction should be drawn with regard to “new”
6 versus “existing” loops. Supra submits the answer should be “no.” ILECs love to threaten the
7 Commission with the argument that by being forced to provide new elements on a cost-based
8 basis to its competitors, the ILECs are provided with a disincentive to build out their networks.
9 First, given the high death rate of companies in this industry, ILECs have been given the
10 opportunity to build out their networks on someone else’s dime. CLECs have been paying the
11 costs while the ILECs maintain the ownership. Each time a CLEC goes under, the ILEC
12 reclaims the use of the facilities. Second, Congress has provided a means for CLECs to get the
13 benefit of recently built facilities – the CLEC could first order such under the resale regime, have
14 the ILEC install the new loop, and then place an order to convert such to a UNE basis.

16 **ii ~~DAML~~ DAML and other Pair-Gain Technology**

17 Supra asks the Commission to consider the ILECs’ use of DAML and other pair-gain
18 technologies, including Digital Loop Carrier (“DLC”) in its analysis of the loop UNE. ILECs
19 use DAML to provide additional loops in areas where they have “run out of loops”. Further,
20 ~~ILECs~~ often add DAML to the first line of a CLEC customer, with two perfectly good
21 working telephone circuits, in order to provide a CLEC customer *two* DAML provisioned lines.

¹² Supra will discuss the need for new rules regarding ADSL functionality as a result of the anti-competitive activities of the ILECs, and the inaction of the state public service commissions.

1 This then frees up a loop for a new ILEC customer. In Supra's experience, the ILEC never
2 announces these changes to CLECs, and continues charging the ALEC for two loops. In
3 essence, the ILEC is getting the newly derived loop for free. However, this also increases the
4 CLECs support costs as will be explained below.

5
6 DAML (and other) is a digital technology that synthesizes the normal operation of two
7 loops by digitizing each telephone circuit and passing the digitized information over a single
8 loop. The digitized signals are extracted by corresponding central office based electronics and
9 placed on separate two wire copper circuits and fed to the Class 5 switch. Much like DSL data,
10 the two digitized voice channels are transmitted over the copper loop in two different frequency
11 bandwidth carrier frequencies, higher than the established analog voice bands. While the
12 technical details of modulation can be different than those of xDSL due to the limited bandwidth
13 required, on the whole, the architecture of the solution is virtually identical to that of xDSL
14 services.

15
16 Ever since modem speeds increased above 28.8 BPS, it has become essential that the loop
17 serving a customer have, at most, a single analog to digital conversion. The compression
18 algorithms inherent in 56K modems will tolerate no more, and indeed require non-standard
19 implementations of the GR-303 to achieve full rated speed. GR-303 is the standard
20 communication protocol between Digital Loop Carrier (DLC) equipment and the Class 5 switch
21 that serves it. With a standard GR-303 interface a 56K modem can easily be limited to 28.8K or
22 less. With DAML added in such a loop communications can fall as low as 4.8K!

1 Given the ubiquitous presence of the Internet, digital modem, DSL and future Advanced
2 Services depend upon the loop characteristics, and particularly equal access to control loop
3 quality characteristics. While the ILEC has the unbridled ability to "tune" a loop to satisfy a
4 given customers complaint, BellSouth currently only "guarantees" its loops to be capable of 9600
5 baud operation!¹³ Clearly the ILEC has a substantial advantage over the CLEC in this situation,
6 and the opportunity for anti-competitive "win-back" of a customer whose line speed dramatically
7 drops at conversion to a CLEC is all too difficult to ignore.

8
9 Typically the scenario is that an ILEC customer converts to Supra. At some point in
10 time, either at conversion or sometime after, with no prior warning to Supra, the Customer line is
11 converted to DAML (or run through multiple DLC systems). Immediately the customer begins
12 complaining about the drop in modem speed. Supra's costs are increased until Supra can get the
13 DAML removed, or ultimately, the customer returns to the ILEC where it **can** get the DAML
14 removed and full modem speed restored. Throughout this process, Supra's customer support
15 costs increase due to increased call volume and the costs to identify and correct this problem,
16 caused by a lack of notification / authorization prior to an ILEC action. The ILEC gets a free
17 loop paid for by Supra, and potentially reclaims the customer due to Supra's "bad service."

18
19 This final issue is most insidious to Supra as it represents hidden, undocumented, and
20 often denied violations of the Telecommunications Act¹⁴, all FCC orders in this regard¹⁵,

¹³ Supra's current Interconnection agreement has extended that figure, but only to 14.4 Kbps!

¹⁴ Telecommunications Act of 1996, 47 U.S.C.A. § 251(c)(3).

¹⁵ 47 C.F.R. § 51.315(b).

1 including orders that have been sustained by the Supreme Court of the United States¹⁶. An
2 ILEC's deployment of DAML equipment on the lines of Supra's customers when those
3 customers were not provisioned via DAML a) as ILEC customers, or b) when initially converted
4 to Supra is a violation of Federal law intended as an anti-competitive practice against CLECs. If
5 this issue is truly as benign and insignificant as the ILECs represent, then there should be no
6 problem with limiting use of this technology to CLEC customers. The Commission should
7 enjoin ILECs from deploying ~~DAML-pairgain technology~~ on a CLEC customer circuit, and
8 subject the ILEC to fines for so doing. Further the commission needs to set new and higher
9 standards for the digital transmission capabilities of the loop that only ILECs are currently
10 capable of fully enjoying.

11
12 **iii High frequency portion of the loop**

13 ~~Dave— please add here.~~ In the third report and Order on Reconsideration in CC Docket
14 98-147, ¶ 26, this Commission gave ILECs the right to refuse to provide DSL service to CLEC
15 customers provision service as UNE combinations without fully considering all section of the
16 ACT. The result has been a license to use DSL as an anti-competitive winback tool. Customers
17 being billed as resale are being disconnected daily, CLECs are converting customers back to
18 resale to stem some of the disconnections. BellSouth has gone so far as to claim that the "ADSL
19 Loop" discussed in the NPRM, a NID, the high-frequency portion of the loop, DSLAM, and
20 ATM connection back to the Network Service Provider ("NSP"), clearly a Telecommunications
21 service under the ASO¹⁷ is being refused to UNE customers.

395 ¹⁶ *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 368, and pg. 393-

¹⁷ CC order 98-48 in Docket 98-147.

1 That is particularly unfortunate as the reality is, due to the preponderance of carrier
2 serving areas, Supra Exhibit # 7 (65%), it is no longer possible to serve DSL from the central
3 office alone. Some BellSouth statistics:

- 4 • BellSouth has deployed DSL in 1000 central offices
- 5 • BellSouth has deployed DSL in over 8700 Remote terminals
- 6 • BellSouth has so far denied Supra collocation in Remote terminals
- 7 • Out of 6000 surveyed Supra customers with DSL, only 14 were not served via the
8 DSL Transport Service from BellSouth's FCC #1 tariff.
- 9 • In April 2001 there were approximately 200,000 such circuits in operation
- 10 • In April 2001 there were approx. 150,000 such circuits used internally by BellSouth
- 11 • On December 31 2001 there were 620,500 such circuits in operation
- 12 • BellSouth refuses to allow said FCC #1 tariffed service to be provided to a customer
13 served by UNE loop, or UNE combinations.
- 14 • BellSouth refuses to offer the Tariffed Transport Service as a UNE under these
15 conditions despite what we believe to be clear, but arguable guidance in the *UNE*
16 *Remand Order*.

17 DSL has become a battleground of misinformation, inconsistent policy, customer
18 disconnection, and has stifled CLEC competition in the Advanced services market due to radical
19 re-design of the ILECs outside plant and aggressive manipulation of existing FCC regulations
20 designed to achieve the dramatic increases in market share. We implore this Commission to take
21 a hard-nosed look at real world effects of prior orders and re-establish an even playing field for

1 CLECS by establishing new UNE rules for Packet switching, DSL, and other Advanced Service
2 capabilities of the modern electronic loop.

4 **b. Port – Local and Tandem**

5 **i Obligation to unbundle tandem switch port**

6 ~~□ Dave — please add here:~~ Supra believe that the *First Report and Order* unbundles the
7 Tandem switch in the same manner the end office switch has been unbundled. Yet BellSouth
8 disagrees, while at the same time seeking and charging UNE rates for traffic that transits the
9 Tandem to other offices in the LATA.

11 Supra Telecom offers its customers packages that provide unlimited flat rate IntraLATA
12 (Local Long Distance) dialing as one of our "new and innovative" services. Supra's attempts to
13 use Unbundled Tandem switching to achieve better cost basis have been denied by BellSouth.

15 Supra finds itself in the strange position of having been forced to pay UNE rates for
16 Tandem switching, and Common Interoffice Transport for its customers served by UNE
17 combinations, but unable to order Tandem switching, Dedicated Interoffice transport to create an
18 IntraLATA calling network. This Commission should address the full unbundling of local
19 switching, both Class 5 and Class 4 applications.

21 **ii Features and Functions of the Switch – SMDI**

22 Supra asks that the Commission review the issue of SMDI and ISMDI as it relates to the
23 unbundled port obligation. Unbundled Local switching requires that the CLEC who leases a

1 switching port be given all features and functionality of the port. One such feature is the ability
2 of the port to produce stutter dialtone, or activate a light on the telephone set of a subscriber in
3 response to a signal from a voicemail system or provider to let the telephone subscriber know
4 there is a message waiting. Traditionally this task has been done via the System Message Desk
5 Interface (SMDI) and enhancements to it such as Inter Switch Voice Messaging (ISVM), which
6 allows one switch to pass messaging requests across the SS7 network to other switches without
7 the use of a dedicated network.¹⁸

8
9 While this is clearly a function of the switch port, and functionality of it comes with the
10 switch port, in Florida there is no unbundled access to this fundamentally significant signaling
11 network / switch port functionality. Therefore a CLEC is not in parity with the ILEC for the
12 Local Switching UNE. We recognize that transporting this signaling from the switch to the
13 equipment that will use it requires additional UNE transport elements. Don't let that argument
14 cloud this issue. What is in contention that SMDI signaling, (or even TCAP SS7 signaling for
15 newer voicemail systems) is a core component of the base software that is delivered with the
16 switch and as such is inseparable from the local switching port and SS7 signally associated with
17 it.

18 In Florida, BellSouth does not provide unbundled access to this signaling network, but in
19 its FFC #1 Access Tariff lists SMDI and something called ISMDI. The description of ISMDI is
20 an SS7 / TCAP based network that, through a convoluted conversion of conversion between
21 SMDI, ISDN and SS7 / TCAP messages, provides a single connection to a signaling connection

¹⁸ Lucent Document 235-190-104 5ESS 2000 switch ISDN Feature Descriptions, Section 13.4 Message Service System Features, Issue 3 pages 13-67 through 13-126

1 that is supposed to be able to activate a Message Waiting Indicator (MWI) on a Lata-wide basis.
2 This is clearly not as cost effective as the ISVM approach. The alternative an ALEC has would
3 be to establish an SMDI connection to each and every BellSouth switch in Florida, a total of 206
4 individual connections at last count. This is not cost effective compared to ISVM and presents a
5 substantial barrier to entry.

6
7 Nowhere is there any mention of direct access to the ISVM signaling, or unbundled
8 access to any signaling required to activate MWI on a leased Local Switching port. These
9 omissions are creating an unusually high barrier to entry for a CLEC like Supra Telecom who is
10 expected by telephone subscribers to provide the same services as the ILEC as seamlessly as the
11 ILEC provides those services.

12
13 There is no separate signaling network required to transmit messages switch to switch. It
14 is included in the basic switch port functionality, and network wide signaling across the SS7
15 network according to meetings Supra Telecom has held with Bell Labs personnel on this issue.
16 Additionally the Bell Labs Engineers confirmed that this ISVM has been adopted as an industry
17 standard for many years now (approx. 7 years). This industry standard is also supported by
18 Nortel and Siemens, so that all switches in BellSouth's network are compliant. ~~Figure 13-14~~
19 ~~along with section 13.4.1.2¹⁹~~ -Lucent manuals show that the required software is part of the base
20 generic software since, at least, the 5E8 generic. Since the current software release from Lucent
21 is 5E15, and since Lucent does not support switches with software loads beyond two prior
22 revisions, it is obvious that the required software is already loaded on BellSouth's switches.

CLEC's access to the ISVM signaling "network" should be defined as a fundamental component of Local Switching line and trunk ports and CLEC access to this network should be required of and provided by all ILECs. The various message-signaling networks are necessary to a CLEC to compete with the ILEC, and failure to have access to such signaling substantially impairs Supra Telecom's, and other CLECs', ability to acquire new customers who view such a limitation as the mark of an inferior carrier.

c. Packet-Switching

ZFGFGGDZSGDZGDGZF As stated above under high Frequency spectrum, CLEC's must collocate in over 1000 BellSouth Central Offices and over 8700 remote terminals to even begin to compete with BellSouth. Supra believes that the Tariffed DSL transport service offered under FCC Access Tariffs is a Telecommunications service per the ASO, and that unbundling of this service is essential to promote competition as DSL becomes more ubiquitous.

d. OSS

"Finally, we seek comment on whether any of our existing OSS requirements can be streamlined or modified to eliminate unnecessary regulatory burdens. " NPRM 01-316

Access to fully functional OSS is essential for CLECs to provide their services to all types of customers using all the entry strategies established by the 1996 Act. As such, the entire

¹⁹ Id.

1 thought process related to “nondiscriminatory access”²⁰ to OSS needs to be reconsidered. Under
2 the current system there exists two separate OSS, the ILECs’ OSS and the inferior CLEC OSS.
3 The FCC, through its “substantially same time and manner” and “provide a reasonable
4 competitor with a meaningful opportunity to compete” standards, for OSS used in the Resale and
5 UNE environments respectively, have created a telecommunications market whereby the ILECs
6 are rewarded for being the ILECs. Under this system, the ILECs are permitted to keep their OSS
7 while creating a dramatically inferior product to serve the CLEC industry. Separate but equal is
8 not the case.

9
10 In order to rectify this lack of parity, the FCC should look toward the implementation of
11 one uniform OSS for the entire telecommunications industry, whereby ILECs and CLECs are at
12 parity. As guidance, the FCC can look to the airline industry for an example of equal access

²⁰ In the First Report and Order at ¶312, the FCC defines “nondiscriminatory access” to mean:

Accordingly, we conclude that the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, **the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself.** (Emphasis added.)

1 throughout the industry. By implementing such a change in the way OSS is regulated, the FCC
2 and State Commissions could substantially decrease the amount of regulatory action that is
3 currently present with respect to nondiscriminatory access to OSS. The cost of implementing
4 such a system should be borne by the ILECs; as the cost should actually be less than what is
5 currently spent in developing and maintaining the current system - separate OSS.

6 7 **i Discussion**

8 The fundamental problem in OSS parity is that ILECs use internal, well-established and
9 decades-old OSS to provide services to its customers, while competitors must use new, fragile
10 OSS whose development and maintenance are subject to the ILECs' actions and
11 ~~inactions~~inaction's. CLECs must wait much longer than ILECs' retail arms to obtain access to
12 ILECs' networks and to provide local telephone services. As such, CLECs' customers are
13 subjected to confusion, outages, and errors. This is a significant barrier to competition, as the
14 FCC has recognized:

15
16 [c]ompeting carriers must have access to the functions performed by
17 the incumbent's OSS in order to formulate and place orders for network
18 elements or resale services, to install service for their customers, to maintain
19 and repair network facilities, and to bill customers. . . . [W]ithout
20 nondiscriminatory access to the BOC's OSS, a competing carrier 'will be
21 severely disadvantaged, if not precluded altogether, from fairly competing' in
22 the local exchange market.²¹
23

²¹ *SBC Kansas-Oklahoma Section 271 Order, Joint Application by SBC Communications, Inc. et al., for Provision of In-Region, ~~InterLATA~~interLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order at ¶ 104, CC Docket No. 00-217, FCC No. 01-29, (Rel. January 22, 2001) (quoting *Bell Atlantic New York 271 Order*).

1 Over six years of experience proves that this disparity will not be voluntarily remedied by
2 the ILECs. ILECs simply refuse to devote sufficient resources necessary to develop CLEC OSS
3 to the point of parity, and have little to no incentive to do so. Rather, the ILECs' strategy has
4 been to devote minimal resources to the development of OSS – just enough, they hope, to secure
5 approval of a Section 271 application. Most importantly, ILECs determine and control the
6 timetable for any OSS improvement, development and implementation. As the Department of
7 Justice ("DOJ") has found:

8
9 BellSouth also has not demonstrated that it supports CLECs' need to
10 build and maintain the interfaces they use to submit orders to BellSouth. In
11 particular, BellSouth's quality assurance testing environment for its interfaces
12 appears inadequate, and its "change management" process for resolving
13 problems affecting BellSouth's interfaces and updates to its systems appears
14 unresponsive to CLEC concerns.²²
15

16 Thus, the CLECs' largest and strongest competitors, the ILECs, control their ability to
17 compete on a level playing field, with respect to OSS.

18
19 From the inception of the 1996 Act, inequalities in OSS have been readily identifiable;
20 however, future OSS discrimination will certainly be more subtle. For example, ILECs need
21 only provide a few untimely, inaccurate or incomplete bills to CLECs to wreak havoc and,
22 perversely, enhance their own competitive position, as customers are likely to blame the CLECs
23 for billing and other errors and would switch back to the ILECs, even if the billing errors were
24 caused by the ILECs. Being in the local business itself, ILECs are well aware that billing errors,

²² See Evaluation of the U.S. Department of Justice, CC Docket No. 01-277, dated November 6, 2001, at pages 26-27.

1 perhaps more than any other single aspect of customer service, can easily sabotage competitors'
2 efforts to recruit and retain local customers. In other words, ILECs know that if they cannot
3 retain their local monopoly by stopping customers from leaving in the first place, they can do so
4 on the rebound when customers get dissatisfied with their new telephone service provider.

5
6 With respect to BellSouth's CLEC OSS, a BellSouth witness in proceedings before the
7 Florida Public Service Commission admitted during deposition and under cross examination at
8 hearing that BellSouth's Human-to-Machine interfaces do not provide nondiscriminatory access
9 pursuant to the FCC's definitions²³. In particular, BellSouth's LENS, the predominant CLEC
10 OSS in BellSouth's nine-state region, is a Human-to-Machine interface and, according to
11 BellSouth, does not provide nondiscriminatory access²⁴.

12
13 Moreover, BellSouth's witness testified that 10.9% of CLEC LSRs that are electronically
14 submitted through BellSouth's CLEC OSS fallout for manual/human intervention²⁵. This fallout
15 for manual/human intervention occurs regardless of the electronic interface being used by the
16 CLEC. As such, a CLEC that uses a Human-to-Machine or Machine-to-Machine interface is
17 going to have LSRs that require and receive such intervention. With respect to CLEC UNE

²³ BellSouth Witness Pate in FPSC Docket Number 001305-TP, at Hearing Transcript page 1188, line 16 to page 1189, line 3; and Deposition page 65, line 9 to page 66, line 7.

²⁴ *Id.*

²⁵ BellSouth Witness Pate in FPSC Docket Number 001305-TP, at Hearing Transcript page 1207, line 25 to page 1208, line 7.

1 LSRs, the DOJ²⁶ stated that: “BellSouth’s most recent iteration of its achieved flow-through rates
2 indicates that its service representatives process about a third of electronically submitted UNE
3 orders manually.”²⁷ Thus, with respect to the UNE environment, BellSouth admits to a much
4 higher percentage of CLEC LSRs that fall out for manual/human intervention.

5
6 In comparison, BellSouth indicates that: “‘mechanized fallout’ does not occur when
7 [BellSouth] service representatives submit requests via RNS or ROS.”²⁸ RNS and ROS are the
8 OSS interfaces utilized by BellSouth’s retail departments. As such, BellSouth experiences 0%
9 “mechanized fallout” while CLECs experience 10.9% or about a third for CLEC UNE LSRs.
10 This percentage of electronically submitted LSRs that result in manual/human intervention is in
11 addition to the 11% of all CLEC submitted LSRs that **must** be manually submitted for such
12 intervention²⁹.

²⁶ See Evaluation of the U.S. Department of Justice, CC Docket No. 01-277, dated November 6, 2001, at page 15.

²⁷ BellSouth September GA PMs *Ex Parte* at 42 (PM O-3: Percent Flow-Through Service Requests--Achieved) (UNE flow through of 68.8 percent).

BellSouth excludes from the flow-through calculations orders that fall out, but are rejected for CLEC error. See BellSouth GA Varner Aff. Attach. 1 at 2-5 - 2-6; see also WorldCom Comments at 18 n.13 (when an order falls out and a BellSouth service representative then finds an error in the address, the order is rejected and not counted against BellSouth’s flow-through performance even if the address error alone would not have caused the order to fall out). A significant number of all rejected UNE orders are manually processed. See BellSouth August GA PMs *Ex Parte* (PMs O-7: Percent Rejected Service Requests (all UNE disaggregations), O-13: LNP-Percent Rejected Service Requests (all UNE disaggregations)).

BellSouth asserts that its flow-through numbers are roughly comparable to the rates Verizon reported on its successful section 271 applications pertaining to Massachusetts and Pennsylvania. BellSouth Flow-Through III *Ex Parte* at 2. This comparison, even if true, does not address the extent to which BellSouth’s manual processing negatively affects CLECs.

²⁸ BellSouth Late-filed Exhibit 36 in FPSC Docket Number 001305-TP.

²⁹ BellSouth Witness Pate in FPSC Docket Number 001305-TP, at Hearing Transcript page 1185, lines 24-25.

1 More problematic is the report from Birch Telecom, a new entrant in BellSouth's service
2 territory in Georgia that is offering UNE-platform service to small business and residential
3 consumers. Birch asserts that roughly **35 to 45 percent** of its electronically submitted orders are
4 manually processed either because BellSouth's OSS has not been sufficiently developed to
5 process the order on an automated basis or because a glitch in the software causes them to fall
6 out for manual/human intervention.³⁰

7
8 The significance of manual/human intervention in processing CLEC LSRs was not lost
9 on the DOJ.³¹

10
11 To manually process an order, BellSouth's service representatives re-
12 type some or all of the information on the CLEC order form into an internal
13 electronic service order. This manual processing increases the expense of
14 CLEC ordering, lengthens the time required to place customers in service, and
15 creates errors that cause service requests to be improperly rejected or to be
16 provisioned incorrectly.³²

17
18 On this basis alone, no matter how one looks at the two separate systems, this disparity
19 must lead to the conclusion that, at least for BellSouth, the current system does not meet the
20 FCC's standards of "substantially same time and manner" and "provide a reasonable competitor
21 with a meaningful opportunity to compete". If anything, this conduct by BellSouth is one of the
22 most glaring examples of an ILEC's anticompetitive behavior in delaying implementation of the

³⁰ *Id.* at 12-13 (challenging the integrity of BellSouth's reported flow-through data). Birch finds this especially troubling since the vast majority of its orders are for simple POTS (plain old telephone service). *Id.* at 17.

³¹ See Evaluation of the U.S. Department of Justice, CC Docket No. 01-277, dated November 6, 2001, at pages 14-15.

³² See e.g., AT&T Bradbury Decl. ¶¶ 72, 73, 88, 89; Birch Comments at 16-17, 20-21; Covad Comments at 15-17; WorldCom Comments at 15-21.

1 1996 Act. Without proper incentives, ILECs have proven that their main objective is to raise
2 CLECs' costs and to delay implementation as long as possible as the higher the cost and the
3 longer the delay the more CLECs that fall by the wayside.

4
5 To compound this anticompetitive situation, is the incessant downtime experienced by
6 BellSouth's CLEC OSS. As found by the Florida Public Service Commission Staff, BellSouth's
7 CLEC OSS are subject to frequent crashes and downtime.³³ Not only are CLECs handicapped
8 through the use of the separate and inferior OSS, but this separate system is constantly
9 unavailable. Under the current system, BellSouth has a distinct advantage over CLECs in that
10 CLECs cannot even use the CLEC OSS for substantial periods of time.

11
12 Such downtime was also found to be troubling by the DOJ.³⁴

13
14 Reliable electronic connections between trading partners is a necessary
15 prerequisite for CLECs to compete, particularly as they submit increasing
16 numbers of orders to the RBOC. When BellSouth's OSS pre-ordering and
17 ordering interfaces are partially or totally out of service, the CLECs' ability to
18 access customer information for prospective customers, order services to serve
19 new customers, or make feature changes is severely diminished.³⁵ CLECs
20 operating in the BellSouth region complain of significant service outages,
21 including slow or degraded service.³⁶ By contrast, BellSouth reports virtually

³³ Staff Recommendation in FPSC Docket Number 001305-TP, dated February 25, 2002, at pages 59-60.

³⁴ See Evaluation of the U.S. Department of Justice, CC Docket No. 01-277, dated November 6, 2001, at pages 25-26.

³⁵ Comptel Comments at 9; Mpower/Network Plus/Madison River Comments at 4-5; *see also* Birch Comments at 30; Birch Wagner Decl. ¶ 8.

³⁶ *Id.*; *see also* Mpower/Network Plus/Madison River Comments at 4-5 (as result of outages many orders Mpower submits electronically are processed manually, requiring longer provisioning intervals, revised delivery dates, and disrupted customer schedules). CLECs are also affected by lack of notice of the outage. One exception issued by KMPG in Florida addresses BellSouth's failures to provide notification of all system outages, and to provide them in a timely fashion. KPMG FL OSS Test, Amended Exception 12 at 1-8; *see also* AT&T Comments at 31.

1 no downtime for any of its interfaces for June, July, and August,³⁷ despite the
2 fact that one interface was so severely degraded for several days in August that
3 at least one CLEC could place only a fraction of the orders it usually submits.³⁸
4 This discrepancy may be due to the fact that BellSouth only reports full
5 interface outages. Excluding service degradation from OSS availability
6 appears to mask the competitive burden placed on CLECs.³⁹
7

8 Yet another example of the inequalities between the separate systems is in the submission
9 of ILEC service orders versus CLECs Local Service Requests (“LSRs”). In BellSouth’s nine-
10 state region, CLEC LSRs must be processed by the Local Exchange Ordering (“LEO”) system
11 and the Local Exchange Service Order Generator (“LESOG”). These two steps are necessary in
12 order to provide edit formatting and translation of the industry standard LSR format into that of a
13 service order format that can be accepted by the Service Order Communications Systems
14 (“SOCS”) for further downstream provisioning by the BellSouth legacy OSS. This is not
15 required of the BellSouth retail interfaces as they were designed to submit the service request in
16 a SOCS compatible format at its initiation. It is necessary to note that the LEO and LESOG
17 steps result in numerous clarifications and rejections of CLEC LSRs. Most CLECs are still
18 awaiting the reasoning behind the requirement that CLECs submit LSRs instead of service
19 orders. Especially considering that BellSouth has already designed all of the edit-checking

³⁷ See, e.g., BellSouth August GA PMs *Ex Parte* at 19 (PM OSS-2: Interface Availability (Pre-Ordering/Ordering)/EDI/Region, LENS/Region, TAG/Region).

³⁸ Birch Comments at 30; Birch Wagner Decl. ¶ 8 (ability to provision orders mechanically depends upon proper operation of TAG; during prolonged TAG failure from August 2-6 Birch was unable to provision 75 percent of normal daily order volume despite working through the weekend). Due to the repeated TAG failures, Birch recently decided to recruit an information technology analyst to manage BellSouth’s OSS systems and release management initiatives. Birch Wagner Decl. ¶ 9.

³⁹ Although BellSouth performance reports indicate virtually no downtime, in its application BellSouth states that during July, the LENS system was out of service or providing only degraded service during a total of about 20 hours, or almost 4 percent of total LENS scheduled system availability. BellSouth Stacy Aff. ¶ 353. BellSouth’s analysis may understate the extent of the problem because, according to one CLEC, it does not include outages of less 20 minutes. See Birch Wagner Decl. ¶ 6. Birch claims that in June 2001, it experienced more than 30 TAG failures that did not show up in BellSouth’s Change Control Outage Report (which only lists failures longer than 20 minutes in duration). Birch Comments at 30; Birch Wagner Decl. ¶ 6.

1 systems and implemented them into BellSouth's interfaces but not into the CLEC interfaces. It
2 is this type of ILEC behavior that results in so many issues over ordering and provisioning
3 intervals, issues that can readily be resolved and avoided through the use of one uniform OSS.
4

5 As the FCC, in its First Report and Order at ¶ 312, foresaw:

6 We conclude that the obligation to provide "nondiscriminatory access
7 to network elements on an unbundled basis"⁴⁰ refers to both the physical or
8 logical connection to the element and the element itself. In considering how to
9 implement this obligation in a manner that would achieve the 1996 Act's goal
10 of promoting local exchange competition, we recognize that new entrants,
11 including small entities, would be denied a meaningful opportunity to compete
12 if the quality of the access to unbundled elements provided by incumbent
13 LECs, as well as the quality of the elements themselves, were lower than what
14 the incumbent LECs provide to themselves. Thus, we conclude it would be
15 insufficient to define the obligation of incumbent LECs to provide
16 "nondiscriminatory access" to mean that the quality of the access and
17 unbundled elements incumbent LECs provide to all requesting carriers is the
18 same. As discussed above with respect to interconnection,⁴¹ **an incumbent**
19 **LEC could potentially act in a nondiscriminatory manner in providing**
20 **access or elements to all requesting carriers, while providing preferential**
21 **access or elements to itself.** Accordingly, we conclude that the phrase
22 "nondiscriminatory access" in section 251(c)(3) means at least two things:
23 first, the quality of an unbundled network element that an incumbent LEC
24 provides, as well as the access provided to that element, must be equal between
25 all carriers requesting access to that element; second, where technically
26 feasible, the access and unbundled network element provided by an incumbent
27 LEC must be at least equal-in-quality to that which the incumbent LEC
28 provides to itself. (Emphasis added.)
29

30 This is the situation that is occurring with respect to the UNE, OSS. As BellSouth admits
31 that BellSouth's retail orders do not go through the LEO and LESOG and are not reformatted, as
32 all CLEC orders are, it is obvious that BellSouth has done exactly what the FCC ordered it not
33 do – provide preferential access to a network element to itself.

40 47 U.S.C. § 251(c)(3).

41 See supra, Sections IV.G, IV.H.

1
2 Through CLEC OSS, ILECs have willfully and intentionally created a system that places
3 the ILECs' competitors at a severe disadvantage. This anticompetitive conduct is evident when
4 one considers that LEO, LESOG and the entire CLEC OSS were created specifically for CLECs,
5 as these systems were not even in existence prior to the enactment of the Act of 1996. Moreover,
6 pursuant to the AT&T/BellSouth Florida Interconnection Agreement⁴², these systems were
7 identified as interim solutions, as it was assumed that the ILECs required a period of time to
8 modify their OSS for use by CLECs, not to subject CLECs to the never-ending use of these
9 interim solutions.
10

11 BellSouth even offers its end-users "Service When You Want It". BellSouth's OSS
12 permits BellSouth to provide service to an end-user on the same business day when service
13 orders are placed before 3:00 p.m. and by the next business day when service orders are placed
14 after 3:00 p.m. As CLEC LSRs face numerous delays, clarifications and rejections, it is nearly
15 impossible for CLECs to confidently provide this type of due date confirmation to their end-
16 users. Furthermore, BellSouth considers this ability to be a competitive advantage, as well as it
17 should.
18

19 As a direct and proximate result of delays in the provisioning of services to customers,
20 Supra has lost not only numerous customers, but also valuable goodwill. As the telephone
21 industry is a service industry, the loss of goodwill is extremely damaging to Supra.

⁴² AT&T/BellSouth Florida Interconnection Agreement, dated June 1997, *see* Attachment 4, Section 2.5.3; Attachment 15, Section 4.2 and 4.5.1; and Section 28.6.10.3 of the General Terms and Conditions, *inter alia*.

1
2 What BellSouth has done with its OSS is to separate already-combined network elements
3 before leasing such elements to CLECs. Instead of providing CLECs with already-combined
4 OSS, BellSouth has provided CLECs with a degraded OSS that does not allow CLECs and
5 CLECs' end-users to have the same pre-ordering and ordering experience as that of BellSouth
6 and BellSouth's end-users.⁴³

7
8 As the FCC, in the Third Report and Order at ¶¶ 434 and 523, held that:

9
10 Commentators overwhelmingly agree that the unbundling of OSS
11 satisfies the impair standard of Section 251 (d)(2). OSS is a precondition to
12 accessing other unbundled network elements and resold services, because
13 competitors must utilize the incumbent LEC's OSS to order all network
14 elements and resold services. **Thus, the success of local competition depends**
15 **on the availability of access to the incumbent LEC's OSS. Without**
16 **unbundled access to the incumbent LEC's OSS, competitors would not be**
17 **able to provide customers comparable competitive service, and hence**
18 **would have to operate at a material disadvantage.** While we acknowledge
19 that a competitive market is developing for OSS systems, these alternative
20 providers do not provide substitutable alternatives to the incumbent LEC's
21 OSS functionality. Alternative OSS vendors provide requesting carriers with
22 an electronic interface that allow competitive LECs to access the incumbent
23 LEC's OSS and internal customer care systems. These vendors cannot provide
24 a sufficient substitute for the incumbent LEC's underlying OSS, because
25 incumbent LECs have access to exclusive information and functionalities
26 needed to provide service. (Emphasis added.)

27
28 We thus conclude that an incumbent LEC must provide
29 nondiscriminatory access to their operations support systems functions for
30 pre-ordering, ordering, provisioning, maintenance and repair, and billing

⁴³ It is interesting to note that, although BellSouth does not physically change other unbundled network elements that it claims to make available to CLECs, such as loops and ports, BellSouth readily admits to physically changing the UNE known as OSS. BellSouth witness Pate in FPSC Docket Number 001305-TP, at Hearing Transcript page 1243, line 7 to page 1245, line 9.

1 available to the LEC itself.⁴⁴ Such nondiscriminatory access necessarily
2 includes access to the functionality of any internal gateway systems⁴⁵ the
3 incumbent employs in performing the above functions for its own customers.
4 For example, to the extent that customer service representatives of the
5 incumbent have access to available telephone numbers or service interval
6 information during customer contacts, the incumbent must provide the same
7 access to competing providers. Obviously, an incumbent that provisions
8 network resources electronically does not discharge its obligation under section
9 251(c)(3) by offering competing providers access that involves human
10 intervention, such as facsimile-based ordering.⁴⁶ ¶ 523.
11

12 Nondiscriminatory access is necessary to ensure competition. As the system currently
13 stands in BellSouth's nine-state region, this is not occurring. For example, with respect to
14 preordering and ordering, BellSouth uses the following interfaces/databases: IMAT, ZTRK,
15 SOLAR, OASIS⁴⁷, CRIS, RNS, ROS, DOE, SONGS, ORBIT, RSAG, ORION, WOLF, CRIS,
16 ATLAS, GIMI, AAND, SWISH, CLUE, DSAP, LIST, QUANTUM, CBI, AMOS, ORBIT,
17 OLD, CDIA, OPI, RNS, ROS, DOE, SONGS, SOCS and BOCRIS, while BellSouth provides
18 CLECs with access to LENS⁴⁸, EDI, TAG and RoboTAG.
19

20 ii Conclusion - OSS

21 As the current state of OSS regulation at the federal and state levels has been unable to
22 provide parity, it is time for a fresh look. Whether it is the manual/human intervention, incessant

⁴⁴ We adopt the definition of these terms as set forth in the *AT&T-Bell Atlantic Joint Ex Parte* as the minimum necessary for our requirements. We note, however, that individual incumbent LEC's operations support systems may not clearly mirror these definitions. Nevertheless, incumbent LECs must provide nondiscriminatory access to the full range of functions within pre-ordering, ordering, provisioning, maintenance and repair and billing enjoyed by the incumbent LEC.

⁴⁵ A gateway system refers to any electronic interface the incumbent LEC has created for its own use in accessing support systems for providing pre-ordering, ordering, provisioning, repair and maintenance, and billing.

⁴⁶ Such access was all that Rochester Telephone provided to AT&T, when AT&T attempted to compete as a reseller of Rochester Telephone service. See Letter from Bruce Cox, Government Affairs Director, AT&T to William Caton, Acting Secretary, FCC, July 10, 1996 (AT&T July 10 *Ex Parte*).

⁴⁷ OASIS is linked to COFFI, ATLAS, CRIS & FUEL.

downtime, increased operational costs or the ILECs continued delay in developing and implementing CLEC OSS that is at parity with the ILECs' OSS, the time has come for a truly industry standard OSS. As a result of the continued anticompetitive behavior by the ILECs, the cost of such an OSS should be borne by the ILECs.

e. Other

i IFITL – The implementation of Fiber to the curb, or home.

A loop is a loop, is a loop, or so we have been conditioned to think. However the emergence of true fiber to the home has created a situation where the FCC's *THIRD REPORT AND ORDER ON RECONSIDERATION IN CC DOCKET NO. 98-147* and

FOURTH REPORT AND ORDER ON RECONSIDERATION IN CC DOCKET NO. 96-98, CC 01-26 does not address the prevailing outside plant configuration. The application of 01-26, particularly ¶ 26 has far reaching anti-competitive advantage for the ILEC.

The so called IFITL (or Integrated Fiber In The Loop technology) as manufactured by Reltec (now Marconi), Optical Solutions and numerous other vendors, has the ability to deliver multiple voice, cable television, and Ethernet connection over glass fiber to a de-multiplexer used at the customer premise to separate the signals from their timeslot on the fiber~~and~~. Lacking any connection whatsoever, BellSouth has attempted to use paragraph 26 of CC order 01-26 (Line sharing Order) to restrict Supras access to this technology. Without Commission intervention, the problem will become more pronounced.

⁴⁸ LENS is the same CLEC OSS that BellSouth has admitted fails to provide nondiscriminatory access.

1 B. FCC Should EXPAND the ILEC's unbundling obligations

3 1. ADSL – DSLAM

5 The FCC should expand ILECs' unbundling obligations to include facilities that would
6 allow for the provisioning of ADSL services. Under the current rules promulgated by the FCC,
7 ILECs have been provided a means by which they can, Supra submits unlawfully, tie their voice
8 services to their data services. The FCC specifically held that ILECs do not have an obligation to
9 provide ADSL services on UNE loops leased by CLECs. However, the FCC specifically stated
10 in paragraph 26 of the *Line Sharing Order, Order on Reconsideration* as follows:

11 We do not, however, consider in this Order whether, as AT&T alleges,
12 this situation (i.e. an ILEC refusal to provide xDSL) is a violation of Section
13 201 and/or 202 of the Act. To the extent that AT&T believes that specific
14 incumbent behavior constrains competition in a manner inconsistent with the
15 Commission's line sharing rules and/or the Act itself, we encourage AT&T to
16 pursue enforcement action. ¶ 26.
17

18 Supras customers are being disconnected daily, being given incorrect information stating
19 they are not entitled to DSL, regardless of whether they are billed as UNE or resale.

20 Furthermore, according to the FCC:

21 35. We conclude that advanced services are telecommunications
22 services. The Commission has repeatedly held that specific packet-switched
23 services are "basic services," that is to say, pure transmission services. xDSL
24 and packet switching are simply transmission technologies. **To the extent that**
25 **an advanced service does no more than transport information of the user's**
26 **choosing between or among user-specified points, without change in the**
27 **form or content of the information as sent and received, it is**
28 **"telecommunications," as defined by the Act.** Moreover, to the extent that
29 such a service is offered for a fee directly to the public, it is a
30 "telecommunications service." (Emphasis Added)
31

1 57. We further grant ALTS' petition to the extent that ALTS requests
2 a declaratory ruling that advanced services are telecommunications services,
3 and that the facilities and equipment used to provide advanced services are
4 network elements subject to the obligations in section 251(c).⁴⁹ **Given our**
5 **conclusion above that advanced services offered by incumbent LECs are**
6 **telecommunications services, all equipment and facilities used in the**
7 **provision of advanced services are "network elements"** as defined by
8 section 153(29).⁵⁰
9

10 See CC Order 98-188, *Memorandum Opinion And Order* (adopted August 6, 1998), In
11 the Matters of Deployment of Wireline Services Offering Advanced Telecommunications
12 Capability, CC Dockets No98-147, 98-11, 98-26, 98-32, 98-15 (RM 9244), 98-78 and 98-91.
13

14 In a nutshell, here is how ILECs have chosen to interpret these rules: (1) ILECs
15 will provide an existing customer with ADSL services. (2) Upon conversion to a CLEC, if the
16 customer is being provided service via resale, the ILEC will continue to provide ADSL service.
17 (3) If the customer, at any time, is provided service via UNE-P, the ILEC will inform the
18 customer that it will no longer provide the ADSL service unless the customer converts back to
19 the ILEC voice service.
20

21 Bear in mind why this conduct is so egregious – a CLEC cannot use a business
22 plan based on UNE-P and provide competition in the lucrative ADSL market, absent deployment

⁴⁹ CC Order 98-188 footnote -- ALTS petition at 14-17; NTIA July 17 *Ex Parte* at n.34.

⁵⁰ CC Order 98-188 footnote --The term "network element" is defined in the Act as "a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment" 47 U.S.C. § 153(29).

1 of millions of dollars worth of equipment. ~~Expand on this more.~~ No CLEC can compete
2 under these conditions.

3
4 In a matter brought before the New Mexico Public Regulation Commission (Utility Case
5 No. 3269), the Commission therein was faced with the same issue of Qwest Corporation's
6 ("Qwest") policy to disconnect its high-speed data service (called "Megabit") from a customer
7 deciding to change to a CLEC for local voice service. The Workshop Facilitator, in a Report on
8 Emerging Services ("Report") released on June 11, 2001, found that the threatened loss of
9 Megabit service from Qwest would not only affect customer decisions about taking voice service
10 from others but their refusal to continue to provide Megabit services in these circumstances
11 imposed "significant barriers to competition..." Report at pg. 4. "Qwest should not be
12 considered to be in compliance with public interest requirements as long as it maintains a policy
13 of denying its end users Qwest's own Megabit or xDSL services when it loses a voice customer
14 to a CLEC through line sharing." Id. As set forth in the Commission's Proposed
15 Recommendation on Emerging Services ("Recommendation"), Qwest "agreed to continue
16 providing Megabit DSL service on a line-shared basis to current customers who switch to a
17 CLEC providing voice service over UNE-P," undoubtedly because to disconnect such services
18 would be anti-competitive. Recommendation at pg. 5. (See also the Nebraska Public Service
19 Commission's Order on Emerging Services (Application No. C-2537) entered on October 16,
20 2001 ("NPSC Order"), wherein Qwest not only agreed to continue providing Megabit DSL
21 service on a line-shared basis to current customers who switch to a CLEC providing voice
22 service over UNE-P, but also agreed to "allow a UNE-P customer to request that Qwest provide

1 them DSL Megabit data service only and Qwest [would] provide that service.” NPSC Order at
2 pg. 4.

3
4 ILECs may rely on FCC Order No. 01-26 in CC Docket No. 98-147, 96-98 (Released
5 January 19, 2001) at paragraph 26 regarding *Deployment of Wireline Services Offering Advanced*
6 *Telecommunications Capability* and this Commission’s Order No. PSC-01-0824-FOF-TP issued
7 March 20, 2001 at page 51. However, this reliance is misplaced since the issue of disconnecting
8 already combined network elements, an anti-competitive action in violation of the Act, was not
9 addressed in either of those cited matters. Specifically, the FCC stated: “To the extent that
10 AT&T believes that specific incumbent behavior constrains competition in a manner inconsistent
11 with the Commission’s line sharing rules and/or the Act itself, we encourage AT&T to pursue
12 enforcement action.” FCC Order No. 01-26 at pg. 14, paragraph 26. Accordingly, any
13 suggestion that a CLEC can enter into line-splitting agreements with other carriers for the
14 provision of DSL is ridiculous. Hence, Supra requests that ILECs be required to continue to
15 provide data services to customers who currently have such services, after such customers decide
16 to switch to a CLEC’s voice services. To allow ILECs to disconnect such customers’ data
17 services would be anti-competitive, discriminatory and a violation of 251(c)(3).

18
19 The position that the sharing of the spectrum on local loop/port combination is only
20 permitted when an ILEC utilizes the portion of the spectrum to provide voice is discriminatory
21 and anti-competitive. Any purchaser of local loops from an ILEC should be allowed to use the
22 loop in providing both voice and data at the same time. The Commission’s ordering of such

1 arrangement will further the deployment of advanced data services to all portions of the states,
2 and will not be dependent on the deployment schedule of the ILECs alone.

3 4 **2. Local switching in top 50 MSAs**

5
6 In the *UNE Remand Order*, the Commission held that under certain circumstances, lack
7 of access to unbundled local circuit switching would not impair requesting carriers and that our
8 unbundling rules should take such circumstances into account. With all due respect, Supra
9 believes this Commission erred in that finding. Specifically, in density zone one of the top fifty
10 MSAs, ILECs that make the EEL combination available are not obligated to provide unbundled
11 circuit switching to requesting carriers for serving customers with four or more lines. Based on
12 the experience of the last three years, this “carve-out” should be abandoned.

13
14 Supra has been unable to locate a single vendor for Unbundled Local Switching in the
15 Miami, Ft. Lauderdale or Orlando Florida MSA's. Competitors will sell what is essentially a
16 BellSouth resale clone, but not facilities based Unbundled Local Switching.

17
18 This “carve-out” was created due to the misconception that CLECs had alternative
19 sources of switching in the top 50 MSAs. This is simply untrue, and may be seen merely by
20 examining the price at which ILECs can gouge CLECs in these top 50 MSAs. If competition
21 truly existed, if there were alternative sources of local switching, then one would expect the price
22 for such to be closer to cost, with a reasonable profit tacked on. Presently, in Miami, Ft.
23 Lauderdale and Orlando, the ILEC is charging a rate of 1000% over TELRIC cost (1.40 vs.

1 \$14.00) 700% ~~see if this is accurate~~(Supra Exhibit # 2 at line 1030) over TELRIC costs for
2 local switching. Throw in the actual price charged by BS and the TELRIC cost BellSouth
3 "Market Rate" is 14.00 per 2 wire POTS port per month. TELRIC Cost is \$1.40. In all respects
4 this is usury and there cannot be an identifiable third party market with rates such as this. This is
5 indicative of a complete lack of any meaningful competitor in these areas.
6

7 In all such cases, whatever the network element, Supra requests that the FCC examine
8 whether there really are viable alternatives to a CLEC, or whether, if absolved of the obligation
9 to unbundle such, will the ILEC be free to gauge its competitors. For example, in the top 50
10 MSAs, do the ILECs even make EELs available to CLECs? In Supra's experience, the answer to
11 this question, at least in Florida, has been "no."

12
13 Supra suggests that this issue be ~~looked at from a temporal approach. Once a CLEC is~~
14 ~~able to accumulate a customer base in a given geographic location which would provide it with~~
15 ~~economies of scale so as to make the purchase of a switch cost effective, the ILEC should then~~
16 ~~be absolved of its obligation to provide switching in said location. The key issue then is: how~~
17 ~~many customers in a given geographic location will allow a CLEC to achieve such economies of~~
18 ~~scale?~~ We need to answer this question re-examined in light of the fallout in the industry, the
19 lack of alternate providers, and the astronomical rates of 1000% above cost as indicators that an
20 alternative market does not exist.
21

22 3. Inter-LATA Transport

23

1 ILECs have steadfastly refused to provide CLECs with access to facilities which would
2 allow CLECs to provide services across LATA boundaries. Supra suggests that the TCA already
3 permits such, and that the FCC has provided ample guidance for such an interpretation.
4

5 It is undisputed that ILECs have facilities to provide transport across LATA
6 boundaries and provides services across LATA boundaries to those customers located at or near
7 the LATA boundary. The UNE connections for transport across LATA boundaries already exist,
8 ILECs just simply refuses to provide access to these UNEs because of the competitive
9 implications, using its own, unsupported interpretation of the Act as a pretext to deny CLECs the
10 ability to provide long distance service via this architecture. The law prohibits ILECs from
11 providing unrestricted service across LATA boundaries as an incentive for ILECs to open their
12 markets to local competition. Nothing in the law prevents CLECs from offering unrestricted
13 services across LATA boundaries and if CLECs are providing services across LATA boundaries
14 using UNEs, it is the CLECs that are providing the service, not the ILECs.
15

16 Therefore, a refusal by an ILEC to allow a CLEC access to the
17 transport UNE across LATA boundaries is simply an illegal refusal to allow
18 the CLEC access to the ILEC's network. This is consistent with the FCC's
19 First Report and Order, which states, "the ability of a new entrant to obtain
20 unbundled access to incumbent LECs' interoffice facilities, including those
21 facilities that carry interLATA traffic, is essential to that competitor's ability to
22 provide competing telephone service."⁵¹ (Emphasis added.)
23

⁵¹ CC Order 96-325 in Docket No. 96-98 -- Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 at ¶ 449.

See also 47 CFR §51.309, the FCC’s First Report and Order at ¶356, 440, and FCC Order 96-325 in Docket No. 96-98 – Implementation of Local Competition Provisions in the Telecommunications Act of 1996 at ¶ 336.

III CONCLUSION

The FCC should not give up on the CLEC industry, and should foster rules which will promote competition, thereby promoting development of advanced services and investment in facilities.

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IV

Exhibits

Supra Exhibit # 1 BellSouth proposed UNE and Combinations terms and conditions from a post arbitration order version of a proposed Interconnection agreement between Supra ~~and~~ BellSouth.

Supra Exhibit # 2 BellSouth proposed UNE and Combinations rates from a post arbitration order version of a proposed Interconnection agreement between Supra ~~and~~ BellSouth.

Supra Exhibit # 3 Florida Public Service Commission Order 01-1181 Final Order in Florida Generic UNE Docket 99-0649-TP dated May ~~xx~~25, 2001.

Supra Exhibit # 4 Florida Public Service Commission Order 01-2051 Order on Reconsideration in Florida Generic UNE Docket 99-0649-TP dated October ~~xx~~18, 2001.

Supra Exhibit # 5 6/5/2001 Arbitration Award MIL2347.doc **CONFIDENTIAL**.

Supra Exhibit # 6 12/26/2001 Letter D. Nilson to D. Smith detailing the problems that will occur if BellSouth uses the CLEC OSS LENS to convert Supra's customers from resale to UNE billing.

Supra Exhibit # 7 BellSouth Spreadsheet file (filename BellSouth Network Statistics.xls) available from http://www.bellsouth.com/investor/xls/ir_businessprofile_statistics.xls showing 65.8% of all loop feeder routes contain fiber in the entire nine state region, and 70% of homes qualify for DSL.

~~Supra Exhibit # 35~~ **Supra Exhibit # 8** BST Technology and Deployment Statistics

ir_businessprofile_statistics.xls

End of Testimony

1 I, DAVID A. NILSON, am the Chief Technology Officer of Supra Telecommunications and
2 Information Systems Inc., and am authorized to make this Affidavit on behalf of said corporation.
3 The statements made in the foregoing comments are true of my own knowledge, except as to those
4 matters which are therein stated on information and belief, and as to those matters I believe them to
5 be true.

6
7 I declare under penalty of perjury that the
8 foregoing is true and correct this 18th day of March, 2002.

9 _____
10 David Nilson
11

12 STATE OF FLORIDA)
13) SS:
14 COUNTY OF MIAMI-DADE)
15

16 The execution of the foregoing instrument was acknowledged before me this 18th day of
17 March, 2002, by David Nilson, who [X] is personally known to me or who [] produced
18 _____ as identification and who did take an oath.
19

20 My Commission Expires:

21 NOTARY PUBLIC

22 State of Florida at Large

23 Print Name:

COMMENTS OF SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC

IN CC Dockets 01-338, 69-98, 98-147

IN RESPONSE TO NPRM - FCC 01-361

